STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 21, 2000
v	No. 210030 Recorder's Court
LAQUAN C. DURANT, Defendant-Appellant.	LC No. 97-005113

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of arson of an occupied dwelling, MCL 750.72; MSA 28.267, and sentenced to three to twenty years' imprisonment. He now appeals as of right. We affirm defendant's conviction and sentence but remand for completion of the sentencing information report guidelines departure form.

Defendant first argues that his thirty-six month minimum sentence, which falls outside the sentencing guidelines' recommended range of zero to twenty-four months, is disproportionate. We disagree.

This Court reviews sentencing matters for an abuse of discretion. *People v Milbourn,* 435 Mich 630, 654; 461 NW2d 1 (1990). A sentence must be proportionate to the circumstances of the offense and the offender. *Id.* at 651. "Even though sentences that depart from the sentencing guidelines are subject to careful scrutiny on appeal, *People v Coulter (After Remand),* 205 Mich App 453, 456; 517 NW2d 827 (1994), 'the 'key test' of proportionality is not whether the sentence departs from or adheres to the recommended range, but whether it reflects the seriousness of the matter.' *People v Houston,* 448 Mich 312, 320; 532 NW2d 508 (1995)." *People v Cain,* 238 Mich App 95, 132; 605 NW2d 28 (1999).

Here, as the trial court indicated, the offense committed by defendant was a serious offense which could have resulted in the loss of human life or serious injury to the victims. Defendant set fire to an occupied dwelling while knowing that the occupants were at home. Defendant's comments, both before and after the fire, indicated that he was trying to harm Linda Moses and her son, Joshua, to exact revenge against Joshua for biting him. Considering the serious nature of the offense, defendant's sentence, although outside the sentencing guidelines' recommended range, is not disproportionate.[1] The reasons given by the trial court for departing from the guidelines, the gravity of the offense and the fact that defendant's conduct jeopardized the safety of the Moses family and could have cost them their lives, are adequate to justify the departure.

Although defendant's sentence is proportionate, a sentencing court is required to articulate its reasons for departing from the guidelines range both on the record at sentencing *and* on the sentencing information report ("SIR"). MCR 6.425(D)(1); *People v Fleming,* 428 Mich 408, 428; 410 NW2d 266 (1987). Here, the trial court supplied its reasons for departure at the sentencing hearing, but failed to complete an SIR departure form. Therefore, this matter is remanded to the trial court for the limited purpose of completing the SIR departure form.

As to defendant's claim that the sentencing guidelines were incorrectly scored, where, as here, the trial court clearly explains the sentence and states that it is an appropriate sentence, even if it is a departure from the recommended guidelines' range, the proper scoring of the guidelines is mooted. *People v Phillips (After Second Remand)*, 227 Mich App 28, 38; 575 NW2d 784 (1997).

Defendant also argues that the trial court failed to adequately articulate its reasons for the sentence imposed and failed to individualize defendant's sentence. The purpose of the articulation requirement is to aid appellate review and avoid injustice on the basis of error at sentencing. *Fleming, supra* at 428; *People v Terry*, 224 Mich App 447, 455; 569 NW2d 641 (1997). Here, it is clear from the trial court's remarks that the sentence was individualized and based on the serious nature of the offense committed by defendant and the fact that defendant knowingly jeopardized the lives of others when he set fire to the Moses residence. The trial court's articulation is sufficient to satisfy the requirement that the court "state on the record which criteria were considered and what reasons support the court's decision regarding the length and nature of punishment imposed." *People v Coles*, 417 Mich 523, 550; 339 NW2d 440 (1983), overruled in part on other grounds in *Milbourn, supra*. See also *Fleming, supra* at 428; *Terry, supra* at 456.

Defendant next claims that the evidence was insufficient to support his arson conviction. Specifically, he claims that the prosecutor failed to prove that he caused the fire. We disagree.

When reviewing a claim of insufficient evidence, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Wolford*, 189 Mich App 478, 479-480; 473 NW2d 767 (1991). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *Id*. at 480. Intent may be inferred from all the facts and circumstances. *Id*. Moreover, this Court generally will not interfere with the factfinder's role in determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

In order to establish the crime of arson of a dwelling house, the prosecutor must show not only a burning of a dwelling house, but also that the burning resulted from an intentional criminal act. MCL 750.72; MSA 28.267, *People v Reeves*, 448 Mich 1, 13-17; 528 NW2d 160 (1995); *People v Williams*, 114 Mich App 186, 193; 318 NW2d 671 (1982). "Mere opportunity of a defendant to commit arson is insufficient to support a conviction of arson. To obtain a conviction under the statute, it is necessary to show that a dwelling house was burned by, or at the urging of, or with the assistance of, the defendant and that the fire was wilfully or maliciously set." *People v Lindsey*, 83 Mich App 354, 355; 268 NW2d 41 (1978). In other words, the prosecutor must prove a burning and that the defendant caused the burning. *People v Smock*, 63 Mich App 610, 616; 234 NW2d 728 (1975), rev'd on other grounds 399 Mich 282 (1976).

In *Wolford, supra* at 480-481, the prosecutor presented evidence that the defendant was seen outside a trailer ten minutes before witnesses saw flames coming from the trailer, that although the defendant claimed that he called the fire department from a pay phone at a restaurant located near the trailer, records showed that no call was made from that pay phone, and that the day after the fire the defendant told his sister, in a joking manner, that he had burned the trailer. This Court concluded that "the prosecutor's evidence showed more than that defendant had the opportunity to commit arson. Viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could find that defendant, acting wilfully or maliciously, intentionally set the trailer on fire." *Id*. at 481.

The evidence in this case is stronger than the evidence presented in *Wolford*. In this case, defendant threatened the occupants of the Moses residence immediately before the fire, he "busted" down the front door of the Moses residence, walked into Linda Moses' first floor bedroom, stayed in the bedroom for a short period of time, walked out of the bedroom and said "F--- it. F--- it. I got something for all of them" and "[l]et me see what they going to do now," and then left the house. As soon as defendant left the house, Moses immediately looked into her bedroom and saw flames. Lieutenant Nann, an expert in the field of fire investigation, testified that the fire was not started accidentally, but was intentionally set. The evidence presented showed more than just an opportunity to commit the crime. Rather, viewed in a light most favorable to the prosecution, the evidence showed that defendant

intentionally caused the fire. The fact that Linda Moses did not see matches or a lighter in defendant's possession was not fatal to the prosecutor's case. There was sufficient circumstantial evidence to indicate that defendant maliciously set the fire. We likewise conclude that defendant's conviction was not against the great weight of the evidence.

Lastly, defendant argues that, because the last prosecution witness to testify at trial, Frank Harrison, testified in violation of the court's sequestration order, he is entitled to a new trial. A defendant who complains on appeal that a witness violated a sequestration order must demonstrate that prejudice resulted. *People v Solak*, 146 Mich App 659, 669; 382 NW2d 495 (1985). See also *People v King*, 215 Mich App 301, 309; 544 NW2d 765 (1996).

Assuming that Harrison did violate the sequestration order, there has been no showing that his testimony was tainted or somehow influenced by the testimony of the other prosecution witnesses. Defendant has failed to demonstrate that he was prejudiced by any violation of the sequestration order. Moreover, any error in this regard was harmless in light of the evidence presented by the other prosecution witnesses. See *People v Hill*, 88 Mich App 50, 65; 276 NW2d 512 (1979).

Affirmed, but remanded for completion of the SIR departure form. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry William Saad

[1] Defendant also argues that his three-year minimum sentence is cruel and unusual. However, a sentence that is proportionate does not constitute cruel and unusual punishment. *Terry, supra* at 456.